



**UNITED STATES DEPARTMENT OF COMMERCE**  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/439,534	11/12/99	MOLLER	2312-103

HM12/0323  
ROTHWELL FIGG ERNST AND KURZ PC  
SUITE 701 EAST  
555 13TH STREET NW  
WASHINGTON DC 20004

EXAMINER  
MEHTA, A

ART UNIT	PAPER NUMBER
1638	7

DATE MAILED: 03/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. 09/439,534	Applicant(s) MOLLER ET AL.	
	Examiner Ashwin Mehta	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 November 1999.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-72 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- |   |  |
|---|--|
| 15) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 20) <input type="checkbox"/> Other:  |

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*Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10, 55, and 68, drawn to a vector comprising a first gene encoding a transcription factor, a second inducible gene, a constitutive promoter, a third gene, and two recombination sites flanking a terminator; a method for expressing a gene in a transgenic plant or plant cell at a specific time, comprising said vector; a plant or plant cell comprising said vector, classified in class 800, subclass 278, for example.
  - II. Claims 11-19, 56, and 69, drawn to a vector comprising a first gene under the control of an inducible promoter, a constitutive promoter, two recombination sites flanking a terminator, and a second gene; a method for expressing a gene in a transgenic plant or plant cell at a specific time, comprising said vector; a plant or plant cell comprising said vector, classified in class 435, subclass 320.1, for example.
  - III. Claims 20-29, 57, and 70, drawn to a vector comprising a first gene encoding a transcription factor, a second inducible gene, and a third gene flanked by two recombination sites; a method for expressing a gene, comprising said vector; a plant or plant cell comprising said vector, classified in class 435, subclass 419, for example.

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- IV. Claims 30-38, 58, and 71, drawn to a vector comprising a first gene under the control of an inducible promoter, a constitutive promoter, and two recombination sites flanking a second gene; a method for expressing a transgene in plant cell or plant, comprising said vector; a plant or plant cell comprising said vector, classified in class 800, subclass 298, for example.
  - V. Claims 39-47, 59, 60, and 72, drawn to a vector comprising a gene of interest, a transcription factor gene, a marker gene, an inducible gene encoding a recombinase, two recombination sites; a method for expressing a gene in a transgenic plant, comprising said vector; a plant or plant cell comprising said vector, classified in class 435, subclass 468, for example.
  - VI. Claims 48-54, 61, 62, and 73, drawn to a vector comprising a gene of interest, a marker gene, an inducible gene encoding a recombinase, and two recombination sites; a method for expressing a gene in a transgenic plant cell or plant, comprising said vector; a plant or plant cell comprising said vector, classified in class 800, subclass 288, for example.
  - VII. Claims 63-67, drawn to a method for making a transgenic plant display a design, a word or words, classified in class 435, subclass 69.1, for example.
2. Inventions I-VII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different

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inventions have different modes of operation and effects. The vectors of each of Groups I-VI do not require each other. The methods of Groups I-VI do not the vector products from each of the other groups, nor the display of designs on the transgenic plants of the method of Group VII. The method of making a display of designs on a transgenic plant of Group VII does not require the methods of the other groups.

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II-VII, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

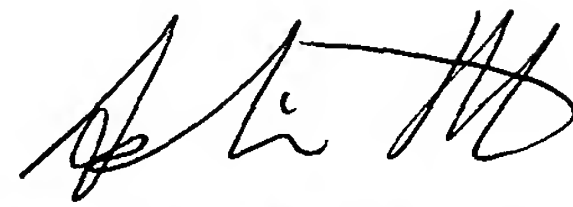
5. Any inquiry concerning this communication should be directed to Examiner Ashwin Mehta, whose telephone number is (703) 306-4540. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Paula Hutzell, can be reached at (703) 308-4310. The fax phone number for the group is (703) 305-3014. Any inquiry of a general

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nature or relating to the status of the application should be directed to THE MATRIX  
CUSTOMER SERVICE CENTER, whose telephone number is (703) 308-0196.



ASHWIN D. MEHTA, PH.D  
PATENT EXAMINER

March 21, 2001